

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Ft. Worth Division

ERGUN CANER,

Plaintiff,

v.

JASON SMATHERS,

Defendant.

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Civil Action No. 4:13-cv-00494 (Y)

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DEFENDANT’S NOTICE OF PLAINTIFF’S CONCESSION

On 17 April 2014, this Court granted Defendant’s Motion to Dismiss for Failure to State a Claim or, Alternatively, for Summary Judgment. On 2 May 2014, Defendant Jason Smathers (“Smathers”) moved the Court for an award of attorneys’ fees. On 15 October 2014, the Court granted Smathers’ motion and awarded fees of \$24,379.80. On 2 December 2014, after Plaintiff Ergun Caner (“Caner”) was unresponsive to the repeated efforts by Smathers’ counsel to collect payment, Smathers asked this Court to compel Caner to pay the attorneys’ fees he owed. On 18 February 2015, the Court granted Smathers’ Motion and ordered Caner to pay the fees by 27 February 2015. On 6 March 2015, Smathers again was forced to file a Motion to Compel with the Court, after Caner failed to either honor the terms of the settlement agreement he signed on 21 January 2015 or obey the Court’s Order. On 16 March 2015, Caner sent the settled-upon amount—\$20,750—to Smathers’ undersigned counsel. On 27 March 2015, Smathers notified the Court of this transaction and advised the Court that the undersigned had informed Plaintiff’s

counsel that, depending on how Caner justified the delay in payment in his Opposition to Defendant's Motion to Compel, Smathers might withdraw his Motion to Compel.

Caner's Opposition was due 30 March 2015. Instead of filing an Opposition and a sworn declaration explaining why he did not honor the terms of his settlement agreement and why the Court should not sanction his conduct, Caner did not file anything. Smathers' Motion is therefore conceded (and accordingly not withdrawn), and the Court should grant the relief Smathers requested: 1) find that Caner violated the Release and Settlement Agreement and accordingly declare it void; 2) order Caner to immediately pay Smathers the full amount previously ordered by the Court (minus \$20,750); 3) order Caner or his counsel to immediately pay \$5000 in sanctions to Smathers; and 4) find Caner or his counsel in civil contempt if the Court's Order is not immediately obeyed.

Date: April 1, 2015

Respectfully submitted,

/s/ Kelly B. McClanahan
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